



# Appealing to the First-tier Tribunal (Primary Health Lists)

## A guide to the appeals procedures

### Introduction

This guidance is designed to help people who wish to appeal to the First-tier Tribunal (Primary Health Lists). It sets out the procedures and processes for appeals.

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## Who we are and what we do

We are an independent judicial body within HMCTS. We consider appeals/applications resulting from decisions made by NHS Commissioning Board (NHS England) as part of the local management of their performers' lists.

Currently General Practitioners (GPs), Dentists, Optometrists and some Pharmacists need to be on a locally managed performers list before being able to provide NHS services within the area of a NHS England Area Team.

Each appeal sent to us is heard by a specifically convened panel consisting of a judge and two members with relevant experience or expertise. One of the members will be a professional member who will be a GP or a dentist or and ophthalmologist

Before the hearing the case will be considered and dealt with by a judge both by looking at the papers and by telephone hearings.

## Tribunal procedural rules

In processing and considering appeal cases, the Tribunal must adhere to procedural rules. Amongst other things, these rules cover:

- providing information and evidence
- case management of an appeal
- the powers of the Tribunal in making directions and striking out an appeal
- setting dates for a hearing
- making the decision and sending it to the parties, and
- appeals against the decision of the Tribunal.

The overriding objective of the rules is to ensure all appeals are dealt with fairly and justly. Parties to an appeal have a part to play in ensuring this objective is met and must assist and co-operate with the tribunal.

The judge dealing with the case may suggest that the parties discuss the issues in the case to see if it can be resolved.

## Appeals process

### Who can appeal?

GP's, Dentists, Optometrists and some Pharmacists need to be on a Performers List in order to provide NHS services. Decisions to admit them to the list, suspend or remove them, are appealed to this Tribunal. There is also some jurisdiction over contracts and stop notices.

## How to appeal

Send your appeal application to the Primary Health Lists office using the appeal form available from the office or from the Primary Health Lists website. Please provide **all** the information required including a copy of the decision letter served you giving you the right to appeal. If you are unable to provide all information at the stage of appealing and need more time, do not delay sending us the appeal, but ask us if you can have more time to provide the information. (You must do this in writing and by email is acceptable.) **We encourage email communication.**

If you are unsure whether you can appeal or if you have any questions about completing any part of the form please contact the Primary Health Lists Office where someone will be able to help you.

**Please note that our administrative team cannot give legal advice.**

Send the completed appeal application form, signed and dated (by you):

**By post to:**

HM Courts & Tribunals Service  
Primary Health Lists  
1st Floor Darlington Magistrates' Court  
Parkgate  
Darlington  
DL1 1RU

**Tel:** 01325 289367

**Fax:** 01264 785013

## Your appeal

When we receive your appeal we will copy it and any papers you have sent with it, to the body against whose decision you are appealing.

## When to appeal

It is important that we receive your appeal application within the time limit allowed for appealing. Please do not exceed the deadline as it may mean that you cannot appeal.

## Late appeals

If you miss this deadline, you can ask for your appeal to proceed. You do this by:

- sending off your appeal as soon as you can
- explaining in your appeal why it is late
- explaining why your case is likely to be successful and should go ahead even if late

- explaining why the body you are appealing will not be prejudiced by a late appeal
- any other matters you think relevant.

If you do not send your appeal to us in time, we can only allow it to proceed if it is fair and just to do so under the Procedure Rules, if the time limit is imposed by a Statute the Tribunal must follow that even if no late appeals are allowed, unless it interferes with your Human Rights.

We will pass your appeal to a tribunal judge or registrar who will decide whether it is fair and just to proceed. If they decide it is, your appeal will go ahead. If the judge or registrar decides it is not, the appeal will go no further.

## Appeal in Welsh

Anyone who lives in Wales may choose to appeal in Welsh. You may also ask that the oral hearing be conducted in Welsh.

## Help with appealing

We can guide you through the appeals procedure. The judge dealing with the case at a telephone hearing and the panel hearing the case at a final hearing are very used to people who are representing themselves. You may be able to get advice from your indemnity provider or professional association. Public funding (legal aid) is not normally available for this type of case.

If you want help with your appeal it is important that you get assistance immediately to ensure you can proceed with your appeal in accordance with our rules. It is important to send in the form and information required in the time scales set out. Do not wait for advice – send them in within the deadline.

## Response to appeal by the respondent

The respondent must copy their response to you at the same time they send it to us. They must do so within **21 days**.

## Telephone Case Management Hearing (TCMH)

When the appeal is registered and the response is received you will receive notification of a Telephone Case Management Hearing (TCMH) with a judge. The advantage of a telephone hearing is that you can attend from any location. A 0800 number and full instructions are given on how to join the hearing. Both parties will ring at the same time.

You will be sent a document called "Guide to telephone case management hearings" which gives full details of what to call the judge and the sorts of things that will be discussed. It is important that both parties discuss the case before the telephone hearing if possible.

At the hearing the judge will set a timetable to ensure that the main hearing runs smoothly and that the panel hearing the case have all the evidence they need to make a decision and enough time to hear the case.

## Requests by the parties

It is also possible to refer an issue to a judge by sending in a written request. You may want to ask for extra time to file a statement or to ask for the hearing to be postponed. If you make such an application it is important to say what you want and why you want it. You should also send a copy of the application to the other party so that they can give the judge their views as well. If you want to request a change to a date it may be helpful to suggest alternative dates.

The tribunal can:

- Allow you or the other party to amend any document you provide in relation to the proceedings
- Give you extra time to file a document or statement
- Adjourn or postpone a hearing
- Stay proceedings (which means proceedings are put "on hold").

## Withholding documents or information

The tribunal can prohibit the disclosure of any document or information to you or someone else if satisfied that disclosure would identify someone it considers should not be identified or if disclosure would be likely to cause serious harm. Withholding documents or evidence is exceptional. In most cases both parties will be entitled to see all the documents in the case.

## Summoning of witnesses and the production of documents

The Tribunal can issue a summons requiring someone to attend an oral hearing or make an order requiring the production of certain documents.

If you want the Tribunal to issue a summons you should raise the issue with the judge at a telephone hearing or make a written application. You will need to explain why you think the summons is necessary. The tribunal does not make a summons unless the person you want to appear has said they will not attend.

People summoned must have 14 days notice of the hearing and may object to it. You may also be asked by the witness to **pay his or her expenses** to attend the hearing

and you will have to meet this cost. If you apply for a summons the tribunal will need full contact details for the witness.

If the other party or someone else – a third party – has documents which you think are relevant to the case you can ask the judge to order them to supply the documents to you.

The Respondent to the case must disclose all relevant documents and evidence to you, even if it supports your case. If you think they have not supplied you with all the relevant documents raise the issue with the judge, explaining what you think they haven't sent to you and why it is relevant, either at a telephone hearing or in writing. Do not wait until just before the main hearing to ask – the judge will not want to delay the case unless it is absolutely necessary.

If the documents or evidence are held by a third party you can make an application to the judge. You will need to say exactly what you want them to disclose and give reasons why you think the evidence is relevant. You will also need full contact details for the third party. If the judge makes the order s/he will give the third party a chance to say why they should not disclose the documents or evidence. Again, it is important to make an application for disclosure as early as possible.

## **The hearing**

### **Oral hearing or paper determination**

The Tribunal will hold an oral hearing to determine your appeal. However, the matter can be determined on the papers alone if you and the respondent consent and if the Tribunal agrees. Nearly all cases are held with the parties attending. Suspension cases may be suitable for a paper hearing but in all cases where a factual dispute needs to be resolved, the tribunal will list the case for an oral hearing which the parties attend.

At an oral hearing the panel may hear evidence from witnesses or may just hear from the parties – this is sometimes referred to as a case conducted on submissions.

The Respondent will usually have a legal representative. This does not put them at an advantage. The judge and panel members are very used to dealing with self representing litigants (unrepresented people) and they will explain the procedure to you and make sure you have the opportunity to present your case.

Where an oral hearing is held it is in your interests to attend. If you fail to do so the Tribunal can proceed without you. If this happens you won't have the opportunity to put your case or ask questions of the respondent as the hearing progresses.

Oral hearings are held in public except where the Tribunal directs otherwise. The Tribunal can also exclude persons from the hearing or part of the hearing if it has concerns that their attendance may have an adverse impact on the hearing.

## Representation at the hearing

You can be represented at the hearing by anyone you choose, whether a lawyer or not. Let both the tribunal and the other party know if you will be represented and if so, the name of your representative.

## Services of an interpreter or signer

If you need an interpreter or signer at the hearing for a witness or you, please let us know as soon as possible. We will arrange for one to be at the hearing.

## Preparation for the hearing

The decision-making party will usually be asked to prepare a 'bundle' of papers for the hearing. The bundle will include all the documents you and the other party wish the appeal panel to consider. The respondent will send you your copy of the bundle. We will send you a guide to statements and bundles which sets out how to make a statement and what goes into the bundle.

## Arranging the date(s) and venue

The Judge will set a date and time for the hearing at the telephone case management hearing. The venue will be confirmed at a later date. We try to ensure that the hearing is in your local area, and certainly within 2 hours travelling distance.

If you live within reasonable travelling distance of central London, hearings will usually take place at 18 Pocock Street SE1 0BW, which is close Southwark Tube station. Otherwise, we will arrange a venue nearer to your home or business address.

If you live in Wales, your hearing will normally take place in Cardiff or a suitable location elsewhere in Wales.

## Giving evidence

You will be given the opportunity to put your case to the Tribunal and may call any adult to give evidence on your behalf, although the judge has the power to restrict the number of witnesses. The Tribunal can also require either party to provide expert evidence.

Children and vulnerable adults may only appear as witnesses in person if the Tribunal considers it necessary to enable a fair hearing. In such cases the Tribunal may appoint a person with appropriate skills or experience in facilitating the giving of evidence by children and vulnerable adults and may require the evidence to be given by telephone or video link.

When all the evidence has been heard, you and the respondent will have a chance to make closing remarks to the panel. This is an opportunity to highlight what you see as the important points in your case but you cannot introduce anything new at this stage.

## **The decision**

The panel will then retire to consider its decision. The panel will not give you a decision on the day. The decision and reasons will be sent to you and the respondent in writing within 10 working days.

The decision does not have to be unanimous. Where the three members of the appeal panel cannot agree the majority view will prevail. The panel do not normally tell the parties whether the decision is unanimous or by majority unless they give reasons for the different views.

The appeal panel will either uphold your appeal or direct that the appeal be dismissed. In some cases the panel may be minded to allow the appeal but impose conditions, for example in “efficiency” or cases of an application to join the list.

The Tribunal can dispose of an appeal by way of a consent order. Such orders can only be made at the request of both parties if they are in agreement and only if it considers it appropriate.

## **Written decision made public – Reporting restrictions**

All Primary Health Lists decisions are made public on our website, except to the extent that it is necessary to hold any details back to comply with a restricted reporting order. The Tribunal can make an order restricting the publication of names to prevent you, patients, a child or vulnerable adult or any other person at the hearing being identified. If you want a restricted reporting order, you should raise it at the telephone hearing, send your request to the Tribunal setting out your reasons or raise it with the panel. The full Primary Health Lists decisions are published on the Primary Health Lists website.

## **Application to set aside the decision**

You can ask the tribunal to set aside the decision if:

- a relevant document in your case was not received in time to be considered by the appeal panel
- you or your representative was not present at the hearing, or
- you think there was some irregularity in the proceedings.

If you want to ask for the decision to be set aside, you must do so in writing within 28 days of receiving the decision. Forms for the purpose are available on the website.



## Application to appeal the Tribunal's decision

You can apply to appeal the decision of the Tribunal to the Upper Tribunal. However, you must first apply to this Tribunal asking for permission to appeal.

You will not be granted permission to appeal simply on the basis that you don't agree with the decision. You must be able to show that the panel have made an error of law, and demonstrate what that error is.

On receipt of an appeal application, the judge will first consider whether to review the decision based on your reasons for appeal. A fresh decision may be issued following a review, or if the Tribunal grants you permission to appeal, your appeal will be forwarded to the Upper Tribunal to consider.

If the Tribunal decides that a review is not appropriate and if it refuses your application to appeal, you can make an application for permission to appeal direct to the Upper Tribunal. To do this you should contact:

Upper Tribunal (Administrative Appeals Chamber)  
5th Floor  
7 Rolls Buildings  
Fetter Lane  
London  
EC4A 1NL  
**Tel:** 020 7071 5662  
**Fax:** 0207 071 5663  
**Email:** [adminappeals@hmcts.gsi.gov.uk](mailto:adminappeals@hmcts.gsi.gov.uk)  
**Website:** [www.justice.gov.uk/tribunals/aa](http://www.justice.gov.uk/tribunals/aa)

If the First-tier Tribunal hearing was in **Wales**, or you live in **Wales**, you may send the form to the London address or to:

Administrative Appeals Chamber of the Upper Tribunal,  
Cardiff Civil Justice,  
2 Park Street,  
Cardiff,  
CF10 1ET  
**Tel:** 02920 376460

## Withdrawal of appeal

You can withdraw your appeal at any stage in the appeals process, but in most cases you need the Tribunal's consent for the case to be withdrawn. You need consent because there may be instances where the Tribunal think it would be in the interests of justice that the case is heard.

If you want to withdraw, write or email to the Tribunal explaining your reasons, copying your correspondence to the other party.

You need to be aware that in withdrawing your case, the other party may apply for costs against you. Please see under costs below. Applications for costs are rare and are only successful if your conduct has been unreasonable. The earlier you withdraw an appeal the less likely an order for costs will be. The tribunal will always ask your views and your ability to pay before making an order for costs.

Once you withdraw your appeal, you can have your case re-instated with the consent of the Tribunal. If you want your appeal re-instated you have to apply to the Tribunal within 28 days of the notice of withdrawal or, if you withdraw at the hearing, within 28 days of the date of the hearing.

The decision making body may also withdraw from the appeal at any time and if this happens you may be able to ask the Tribunal to award you costs if you think they have acted unreasonably.

## Striking out an appeal

The Tribunal can strike out your appeal or part of your case if you fail to comply with a direction or fail to co-operate to such an extent that the Tribunal panel cannot conduct the proceedings fairly or justly. Also, appeals where the Tribunal has no jurisdiction will be struck out.

Exceptionally, an appeal can also be struck out by the Tribunal if it thinks you have no reasonable prospect of success in your appeal or part of it. However, you will be given the opportunity to make representations before the appeal is struck out and you can ask for your appeal to be reinstated. Any such application must be made in writing within 28 days of the date notifying you of the strike out.

## Costs

### Paying the other parties' costs

In some circumstances the Tribunal can order you to pay all or some of the expenses incurred by the other party in responding to your appeal. But a costs order will only be made if the Tribunal considers you have acted unreasonably in your conduct of the appeal. In considering if costs should be awarded, your financial circumstances will be taken in to account and you will be given the opportunity to make representations. Costs can also be awarded to you by the other party for the same reasons.

**The tribunal does not award costs simply because you have lost your case.**

## Expenses

The Tribunal does not reimburse travel expenses or loss of earnings incurred by parties and their witnesses to attend hearings.

## Further information

If you have any queries about the contents of this booklet or are unsure how to proceed with your appeal, you should contact the Primary Health Lists.

## Complaints

If you have any complaints about the way in which your appeal is being or was, handled by the administration, you should write direct to the Primary health Lists Manager. Please refer complaints about any member or members of the appeal panel for the attention of the Deputy Chamber President. If the complaint is about Deputy Chamber President please address the complaint for the attention of the Chamber President.

The address for all complaints is:

HM Courts & Tribunals Service  
Primary Health Lists  
1st Floor, Darlington Magistrates' Court  
Parkgate  
Darlington  
DL1 1RU

**Tel:** 01325 289367

**Fax:** 01264 785013